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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,277	08/23/2006	Franck Rolion	011348-0024-999	2211
20583	7550	03/09/2010	EXAMINER	
JONES DAY			WALCZAK, DAVID J	
222 EAST 41ST ST			ART UNIT	
NEW YORK, NY 10017			PAPER NUMBER	
			3751	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/598,277

**Applicant(s)**

ROLION ET AL.

**Examiner**

David J. Walczak

**Art Unit**

3751

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/300)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: 8/23/06 & 10/31/06

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statements (IDSs) submitted on 8/23/06 and 10/31/06 have been considered. It is noted that both of these IDSs contain the same references therein. Accordingly, the references in the IDS filed 10/31/06 have been initialed while the IDS filed on 8/23/06 has been crossed out.

### ***Claim Rejections - 35 USC § 112***

Claims 13, 14, 16, 17,, 20, 21, 22, 23 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 13, an antecedent basis for "the extension" should be defined.

In regard to claim 17, it is unclear as to which element "it" (see line 4) is referring.

In regard to claim 20, an antecedent basis for "said body" (see line 1) and "the first part" (see lines 2-3) should be defined (it appears that "said body" should be "said tubular body" and "the first part" should be "the first tubular part").

In regard to claim 21, an antecedent basis for "the rear end" and "the distal end" (see line 3) should be defined.

In regard to claim 22, an antecedent basis for "the first part", "said body" (see lines 2 and 3) and "the second part" (see line 3) should be defined (it appears that "the

first part", "said body" and "the second part" should be, "the first tubular part", "said tubular body" and "the second tubular part", respectively).

In regard to claim 23, an antecedent basis for "the extension" (see line 12) should be defined.

In regard to claim 24, an antecedent basis for "the extension" (see line 11) should be defined.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 13, 15 and 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Isele (U.S. Patent 2,913,103).

In regard to claim 12, Isele discloses a mechanism for a writing instrument (i.e., a lipstick dispenser may be considered a "writing instrument") comprised of a first element 10 including a guide 12 extending between parallel first and second edges, a second element 14 including a pin 15 extending into the guide and movable along the guide wherein the pin has a width in a transverse direction of the guide and a locking device 30/30' wherein the locking device includes a recess (not numbered) extending to the first edge between first and second ends and an elastic member 30/30' which extends opposite the recess from a first base integral with a first end of the recess to a summit

which is positioned in the guide at a distance from the second edge which is less than the width of the pin.

In regard to claim 13, the first base extends into an extension of the first edge.

In regard to claim 15, the elastic member 30' includes a "generally" U-shaped portion (see Figure 9).

In regard to claim 17, viewing Figure 9, the projection positioned below element 30' defines a stop that extends between the first and second edges with the locking device 30' being arranged at a distance therefrom such that the pin may be in contact with the elastic member and the stop (see Figure 6).

In regard to claim 18, the first element 10 and the locking device comprises a single member (see Figure 5).

In regard to claim 19, Isele discloses a writing instrument comprised of a tubular body having a front end with an opening 21 and a writing point (the cosmetic, see Figure 2) capable of moving between storage and writing positions as claimed wherein the mechanism as defined in claim 12 controls the movement of the writing point between the two positions.

In regard to claim 20, the tubular body includes a first tubular part 17 and a second tubular part 16 mounted pivotally with respect to the first part wherein the first element 10 is driven in rotation by the first tubular part 17 and the second element 14 is movable in translation relative to the second tubular part 16 and wherein the guide includes a helical shape (helical guide 13 is considered to be part of the guide 12).

In regard to claim 21, the guide includes proximal and distal "end stops" at the ends thereof (see, for example, the edge 35 in Figure 7, the stop defined above in reference to claim 17, the bottom of the edge of the guide, etc) and first and second locking devices at the ends thereof (see Figure 5).

In regard to claim 22, a mobile member 14 connected to the point forms the second element, the first part 17 of the body forms the first element and the second part 16 of the body includes a housing which cooperates with the mobile member and is suited for guiding the mobile member in translation.

In regard to claim 23, as discussed above, the Isele reference discloses the claimed structure.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isele in view of Shozi et al. (U.S. Patent 5,348,410, herein after Shozi).

In regard to claim 14, although the Shozi reference does not disclose a second base integral with the second end of the recess, attention is directed to the Shozi reference, which discloses another cosmetic dispenser wherein an elastically deformable locking device 103 is secured above a recess via first and second integral

bases 115, 117 (see Figure 4A) wherein such an arrangement is used for better securing the device 103 and thereby increase the range of motion of the device (see column 5, lines 15-21). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the locking device 30' (as shown in Figure 6 of Isele) can be secured to both ends of the recess in order to better secure the locking device.

In regard to claim 16, the first base has a length greater than the length of the second base (see the paragraph bridging columns 3 and 4 of Isele).

In regard to claim 24, as discussed above, the Isele and Shoji references render the claimed structure obvious.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huson Gregory can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David J. Walczak  
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3/3/10

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